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98TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPT. 98-203, Part 1

SERVICE INDUSTRIES COMMERCE DEVELOPMENT ACT OF 1983

MAY 16, 1983.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce, submitted the following

REPORT

[To accompany H.R. 2848]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce to whom was referred the bill (H.R. 2848) to establish a service industries development program, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 8, strike out lines 14 through 16 and insert in lieu thereof the following:

> foreign commerce in services.
>
> (c) On not less than a biennial basis commencing with 1985, the Secretary shall prepare a report (which shall be submitted to the Congress and the President not later than 30 days after the close of the period covered by the report) containing—

Page 13, line 9, strike out "There" and insert "Beginning October 1, 1983, there".

PURPOSE AND SUMMARY

The purpose of this legislation is to promote the international competitiveness of U.S. service firms. The bill provides for the collection of accurate and comprehensive data on the activities of U.S. service firms abroad and the activities of foreign services firms in the U.S. market and delegates authority to the President to establish terms and conditions under which foreign service firms shall

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be eligible to engage in interstate commerce in the U.S., upon a determination that a foreign country discriminates against U.S. firms.

HEARINGS

The Committee's Subcommittee on Commerce, Transportation and Tourism held two days of hearings on H.R. 794. On March 15, 1983 the Subcommittee heard from the Honorable Lionel Olmer, Under Secretary for International Trade, Department of Commerce; Mr. Geza Feketekuty, Senior Assistant U.S. Trade Representative for Trade Policy Development and Coordination, Office of the U.S. Trade Representative; the Honorable Robert Strauss, Ambassador, of Akin, Gump, Strauss, Hauer and Feld; Mr. Harry Freeman, Senior Vice President for Corporate Affairs and Communications, the American Express Company; Mr. Gilbert Simonetti, Jr., of Price Waterhouse, representing the National Foreign Trade Council; Mr. Peter Finnerty, Vice President, Public Affairs of Sea-Land Industries, representing the Coalition of Service Industries, accompanied by Mr. Richard Rivers of Akin, Gump, Strauss, Hauer & Feld; Mr. Ernest Sando, Director, Governmental Relations, Flexi-Van Corporation; Mr. Ronald Shelp, Vice President, International Relations of American International Group, Inc.; Mr. Joseph A. McInerney, Senior Vice President of the Sheraton Corporation; Mr. Bruce Malashevich, Vice President of Economic Consulting Services, Inc. and Mr. Gordon Cloney, Director of International Services Policy and Program of the U.S. Chamber of Commerce.

On April 5, 1983 the Subcommittee heard from the Honorable William E. Brock, Ambassador, The U.S. Trade Representative; the Honorable Olin Wethington, Deputy Under Secretary for International Trade, Department of Commerce, accompanied by Mr. Michael Driggs, Deputy Assistant Secretary of Commerce for Automotive Industry Affairs; Prof. George C. Lodge, Harvard Business School; Mr. Alan Wolff, of Verner, Liipfert, Bernhard and McPherson, representing the Semi-Conductor Industries Association; Mr. George Scalise, Senior Vice President of Advanced Micro Devices, Inc. and Mr. Lawrence Fox, Vice President for International and Economic Affairs of the National Association of Manufacturers.

COMMITTEE CONSIDERATION

On April 26, 1983 the Subcommittee on Commerce, Transportation and Tourism ordered reported to the full Committee by unanimous voice vote a clean bill reflecting the text of H.R. 794, as amended by the subcommittee.

On May 4, 1983, the full Committee met in open markup session and ordered reported to the House the bill H.R. 2848, with technical and conforming amendments, by unanimous voice vote.

BACKGROUND AND NEED FOR THE LEGISLATION

In the economies of the U.S. and most other industrial countries, the service sector has assumed increasing importance over the last 30 years. By 1978, "services" accounted for at least as much of the

Gross Domestic Product of nearly all GATT nations (most nations engaged in international trade) as "goods."

The U.S. has been a leader in the development of service industries trade, but it now faces two major problems to the future growth of this sector of the economy. First, in the absence of an international trade agreement on services, many countries are arbitrarily establishing "protectionist" barriers which limit trade in services. As a result, the U.S. share of total world trade in services has fallen from 20 percent in 1972 to 15 percent in 1980. Second, there is little data on services available, and what is available is very imprecise, often misleading and generally inadequate for the purposes of developing an effective trade policy on services.

To address these problems, the nations of the world need to negotiate an agreement on trade in services. U.S. efforts to initiate the negotiating process at the GATT level have had very limited success so far. Even after negotiations begin, it will be a long time before a services agreement can be implemented. Thus, in the short-term, the reported bill will be needed in order to permit the U.S. to limit foreign access to the domestic service market, if appropriate, in order to promote "reciprocity" (or substantially equivalent relationships). Finally, much better data is needed in order to understand more accurately the nature and problems of the service sector and to develop an effective trade policy.

THE NATURE OF SERVICE INDUSTRY TRADE

Definition.—The term "services" as used in the reported bill means economic outputs which are not tangible goods or structures, including, but not limited to, transportation, data processing, communications, retail and wholesale trade, advertising, construction, design and engineering, utilities, insurance, real estate, professional services, entertainment, and tourism, and overseas investments which are necessary for the export and sale of such services.

Since services are "traded" mostly through the establishment of "affiliates or subsidiaries" in foreign countries, a great deal of services trade problems relate to foreign restrictions on investments which U.S. service companies must make in order to establish their affiliates abroad.

Size.—The Commerce Department estimates that about 60 percent of the U.S. GNP is attributable to the services sector (services in this context includes government) and that about 70 percent of the non-farm work force in the U.S. is employed by the services sector.

Total world trade in services grew by 149 percent between 1975 and 1980. During this time, the U.S. has remained the world's leading service exporter, although the U.S. share of the world service market has declined from 20 percent in 1972 to 15 percent in 1980.

In its report on service industry trade, released in the fall of last year, the U.S. International Trade Commission estimated that foreign revenue of U.S. service industries operating abroad would total $135.7 billion for 1982, up from $109.6 billion for 1981 and $89.4 billion in 1980, representing a 52 percent increase in the past three years. The Commission's study found that the four service industries with the highest overseas earnings in 1981 were: financial services ($56.4 billion); equipment leasing and rental ($13.4 billion); insurance ($6.5 billion); and air transportation ($6.4 billion).

The Commission also found that U.S. service industries used a variety of operational structures to compete in foreign markets: foreign affiliates, including independent subsidiaries and foreign branches, accounted for about 55 percent of U.S. service industries activities abroad; joint ventures accounted for about 20 percent licensing and franchising arrangements accounted for about 12 percent; other structures account for about 13 percent.

The Commission's study also found support for the contention that U.S. service industry exports generate demand for U.S. merchandise exports. According to the study, U.S. service firms activities abroad resulted in U.S. exports of about $3.4 billion in goods in 1982. Furthermore, about half of those service companies surveyed indicated that removal of barriers would have increased their own revenues by about $1 billion in 1981. These same companies also indicated that removal of barriers would have increased U.S. merchandise exports by about $1.8 billion in 1981. About 25 percent of the service companies surveyed said that removal of barriers would have no effect on their revenues from foreign activities.

SERVICE INDUSTRY DATA PROBLEMS

The Administration has recognized the inadequacy of official data for a long time. The Work Program on Trade in Services approved by the Administration's cabinet level Trade Policy Committee in April of 1981, stated that the lack of adequate service trade data is a major obstacle to U.S. efforts to develop service sector trade policy.

At last year's hearing on the services bill, witnesses from the Commerce Department and the Office of the U.S. Trade Representative (USTR) acknowledged that data currently available to the government does not accurately measure the competitiveness of U.S. service firms in world markets—overall or by specific service industry. For example, the Commerce Department concluded over a year ago that data on the foreign operations of U.S. insurance firms was inadequate to permit the government to develop a sound policy on international insurance issues.

The U.S. Chamber of Commerce has also recognized the inadequacy of service trade data. In 1980, the Chamber said that the U.S. Government does not have a coordinated system to gather, process, and publish international service industry data. Moreover, available data does not identify sectoral trade in services on a global, regional, or bilateral basis. The report recommended a comprehensive Federal effort to solve the data problem. In addition, the Coalition of Service Industries (CSI, formed in early 1982) has made improvements in data gathering and analysis the primary goal of its legislative efforts.

In early 1981, the USTR with the Departments of Commerce and State jointly contracted with Economic Consulting Services, Inc. (ECS), a private consultant, to inventory and evaluate existing data on service sector trade and data gathering systems. ECS found that a low level of detail exists on service transactions and data is of uncertain quality for policymakers' purposes. Significant shortcomings in data were reported with respect to foreign market penetration by U.S. service industries and service transactions by companies known primarily as goods producers. ECS said that it is evident that the international role of American service industries will be increasingly important in the coming decades, and that the existing system of data collection will be increasingly inadequate as a basis for developing U.S. policy.

More and better data is needed on:

(1) The volume and market share of foreign service firms operating in the United States;

(2) The volume and market share of U.S. firms operating as franchisees and subsidiaries in various overseas markets;

(3) U.S. direct export of services to various countries; and

(4) The impact of foreign barriers on U.S. service trade.

Currently, the Commerce Department collects data on service industry activities abroad for two purposes: its "benchmark" surveys of U.S. overseas investment; and the calculation of balance of payments. Both of these are inadequate sources of data for the purposes of measuring U.S. services trade.

For example, in the benchmark survey, the Commerce Department looks only at sales of U.S. majority-owned affiliates abroad, but not at sales of affiliates which are less than 50 percent owned by a U.S. entity. Furthermore, benchmark surveys are only done once every 5 years, and the survey results are often not available for several years after the benchmark period.

Distinguishing between trade in goods and trade in services is also difficult in the benchmark surveys because such surveys include "earnings of foreign affiliates." While the benchmark survey identifies earnings of certain foreign affiliates that are clearly in the services sector (finance, insurance and banking), others such as communication and transportation pose special problems.

The balance of payments system is also inadequate for the purposes of measuring trade in services. The balance of payments system is a statistical record of the economic transactions which take place between the U.S. economy and other foreign economies within a given period. The system consists of two basic accounts—the current account and the capital account. The current account includes payments and receipts for service transactions and unilateral transfers of funds such as repatriation of earnings from U.S. subsidiaries overseas. The capital account is comprised of nonmonetary transactions such as increases or decreases in U.S. foreign currency holdings. System statistics are prepared and reported in a variety of reports covering quarterly, annual, and multi-year periods by the Bureau of Economic Analysis (BEA) within the Commerce Department.

In developing data for the balance of payments system, BEA does not use actual industry specific market data to construct system accounts. Instead, only sufficient data to establish an overall estimate of service and investment activity between the U.S. economy and the rest of the world is included.

Furthermore, the balance of payments system omits some services transactions altogether and covers others only partially. For example, transactions in services by branches and subsidiaries of U.S. firms overseas as well as foreign firms in the United States are not considered for balance of payments purposes as transactions between the U.S. economy and other countries. If a branch of a U.S. insurance firm in Germany writes a policy on a German citizen, it is not reported in balance of payment statistics because the transaction involves two entities within Germany and not a transaction between the United States and the German economy.

Since overseas branches and subsidiaries are the principal means by which U.S. service industries operate in foreign markets, a major portion of the business done overseas by U.S. firms is not reported in the statistics. For this reason, USTR has estimated that the actual volume of service transportations may be twice the volume currently reported in such statistics.

Balance-of-payments accounts also do not identify data on the activities of specific service industries. In the capital account, insurance as well as other industry transactions are combined and reported in total. In the current account, insurance on merchandise exports and imports is reported in the merchandise section, while earnings of U.S. insurance subsidiaries are combined with those of all other industries as unilateral transfers.

Although there is a summary covering U.S. trade in services within the current account, several categories include exports and imports from many service industries. Balance-of-payments system data are, therefore, too aggregated to indentify the international positions and problems of individual industries. The schedule below shows the services section of the current account:

TRADE IN SERVICES IN THE U.S. BALANCE OF PAYMENTS

[1982 estimates in billions of dollars]

	Exports	Imports	Balance
Travel, fares, other transportation	26.9	27.7	(.8)
Fees and royalties	7.4	.4	7
Other private services	6.6	3.5	3.1
U.S. Government miscellaneous services	.4	2.2	(1.8)
Direct investment earnings	23.2	5.5	17.7
Other private receipts and payments	59.7	34.6	25.1
U.S. Government receipts and payments	4.2	17.7	13.5
Total	128.4	91.6	36.8

The data in this table do not identify industry-by-industry performance of services trade. The account shows modest surpluses for fees and royalties and other private services; however, those two accounts include transactions of many service industries. For example, "other private services" contains data on about 15 service industries including communications, motion pictures, computers, legal and medical services, accounting, insurance, and construction and engineering. Therefore, performance of specific service industries such as data processing, insurance, and consulting and engineering cannot be accurately measured from these statistics.

In addition, these statistics can create a distorted view of overall U.S. services trade. For example, data for 1982 shows that U.S. service exports totaled about $128.4 billion, imports about $91.6 billion, producing a surplus of about $36.8 billion—an important offset to the $32 billion merchandise trade deficit.

However, this export and import data includes items which are not normally considered services. For example, the account includes earnings from all direct investments ($17.7 billion) and income from all private portfolio investments (other private receipts and payments at $25.1 billion). Furthermore, much of these earnings were from direct and portfolio investments in the manufacturing, not the services, sector. Thus, investment earnings, including earnings from non service-related investments, account for a major part of the surpluses in the services account in any particular year.

In this regard, the Committee notes with concern recent actions taken by the Department of Commerce to further reduce the quality of data collected on service industries. For example, the Committee understands that only those service firms with annual foreign revenues of $3 million or more will be included in the 1982 Benchmark Survey rather than $500,000 which had been the threshold in the past. Furthermore, the Committee understands OMB was arguing to increase the threshold to $10 million.

One of the witnesses at the hearings, Mr. Bruce Malashevich of Economic Consulting Services, identified some of the problems that the Commerce Department's action could cause:

> To give you and example, with respect to engineering, architectural and surveying services, U.S. firms with less than $1 million in receipts accounted for 40 percent of the total industry's receipts, and those firms with less than $5 million in revenue accounted for almost 60 percent. In the computer and data processing industries, firms with less than $1 million in receipts were responsible for 20 percent of the industry total and firms with less than $5 million accounted for 40 percent.
>
> To the extent the same pattern of concentration or, better yet, lack thereof prevails overseas, it could be that much of U.S. services exports would not be captured with a substantially increased threshold in the selected service examples, and to the extent that more information is not disclosed to the public, that certainly reduces the incentive of firms to reduce the costs in reporting these statistics to the Government without resort to any type of forceable reporting procedures.

BARRIERS TO TRADE IN SERVICES

The following are examples of foreign barriers to U.S. service exports which have been reported to USTR.

Accounting

Argentina.—Requirement that local audits be supervised by locally registered and qualified accountants, and audits must be signed by them.

Brazil.—Requirement that all accountants possess the requisite professional degree from a Brazilian University.

France.—Requirement that French citizens own more than 50 percent of accounting firms.

Advertising

Argentina, Australia, Canada.—Radio and television commercials produced outside of the country are forbidden.

Canada.—Income Tax Act prevents expenditures for foreign broadcast media along with foreign publications from being treated as a business expense for tax purposes.

Air transport

England.—Charges foreign air carriers higher landing fees than domestic carriers.

France.—French government has refused to allow foreign carriers to participate in the government sponsored Muller-Access Reservation System, while foreign participation in Air France Alpha III Reservation System is restricted to non-competitive rates.

Chile.—National carriers are given preferential user (landing and other) rates, while foreign carriers are not. This places foreign companies at a competitive disadvantage.

Germany.—Foreign carriers are denied access to the national airline reservation systems.

Italy.—Forces foreign charter operators to use inconveniently located airports.

Auto/truck rental and leasing

Mexico.—Mexican law prohibits the operations of foreign motor carriers in Mexico at the same time as recent changes in U.S. law make it easier for Mexican carriers to apply for operating licenses in the United States. U.S. trucks are required to reload at borders while Mexican trucks travel directly through.

Canada.—Provincial regulations severely restrict operations of U.S. motor carriers in Canada, while hundreds of Canadian motor carriers have obtained licenses to operate in the United States. As a result, Canadian motor carriers may soon monopolize all shipments crossing the United States-Canadian border.

Banking

Australia.—Policy since 1945 allows foreign banks to have representative offices only in Australia. Foreign equity participation in commercial banks limited to less than 10 percent.

Nigeria.—Local incorporation of existing and new branches mandatory.

Venezuela.—1975 General Banking Law. Foreign banks new to Venezuela are limited to representative offices. Already established banks forced to reduce their equity participation to 20 percent.

Franchising

Japan.—Foreign franchisors are not allowed to restrict franchisee from handling competitive products.

Hotel and motel

Switzerland.—Work permits for foreign employees are difficult to obtain, extend or renew.

Greece.—Limits repatriation of foreign earnings under a 20 year old agreement and uses a complex system of requirements to obstruct repatriation of earnings of foreign hotel/motel operators.

Insurance

Korea.—Foreign insurance companies have been prohibited from doing business.

Japan.—Long waiting periods are required before foreign insurance companies can establish operations.

Maritime transportation

Total percent of U.S. commerce shipped on domestic bottoms has fallen from 11 percent in 1960 to less than 5 percent in 1980. This is due to a variety of problems, including foreign barriers. Lack of coordinated U.S. policy is equally detrimental to U.S. shipping interests.

Modeling

Germany.—Requires all models to be hired through German agencies.

Motion pictures

Egypt.—Imports can only be made through state-owned commercial companies. No foreign films may be shown if Egyptian films are available.

France.—Restrictions placed on the earnings of foreign films.

Telecommunications, data processing and information services

Brazil.—International links for teleprocessing systems are subject to approval by the government. The principal criteria used in evaluating requests for data links:

1. protection of Brazilian labor market;
2. protection of operations of national firms and organizations.

All data links approved are reviewed for renewal.

Germany.—International leased lines prohibited from being connected to German public networks unless the connection is made via a computer in Germany which carries out at least some processing in country.

International leased lines available only if it is guaranteed that they are not used to transmit unprocessed data to foreign telecommunications network.

Spain.—Fifty-seven percent import duty on equipment which is otherwise available locally.

The following information concerning services trade barriers was supplied by the USTR:

What are the different kinds of barriers service industries encounter in their foreign operations?

Trade barriers can be divided between tariff and nontariff measures. Tariffs are usually based on the physical properties of the import or its value per physical unit; nontariff barriers cover a wide variety of measures, exclusive of import duties, that serve to impede the free flow of trade across national boundaries—quotas, licensing requirements, customs regulations, government procurement, to name but a few such measures. Because services activities are in many cases unattached to a physical product, services trade is less amenable to the application of tariffs than is merchandise trade. As a result, barriers to trade in services are for the most part of a non-tariff nature.

Impediments to trade in services are not limited to barriers encountered at the national border however; the provisions of a service abroad in many instances requires the physical presence of a service firm within the foreign country. Consequently, services trade is also impeded when a services firm encounters problems of market access or difficulties in doing business in a foreign country once access has been established—as when an insurance company is unable to establish a branch office abroad, when a foreign airline company is not permitted to be part of the reservation system to which the domestic airlines belong, or a construction company is prohibited from or heavily taxed for importing heavy machinery necessary to carry out its project.

The USTR has compiled an inventory of barriers to trade in services based on information provided by different service industries. The inventory is over 200 pages in length and includes more than 800 citations. While some of the issues in the inventory are unique to individual industries, most are common to a number of different sectors and can be classified in terms of their impact on service industry operations, as follows:

Restrictions affecting the sale of a service product prepared outside a foreign country to a resident within the country: Examples include requirements that the buyer place some or all of the order through local private firms or government facility, quotas that restrict or prohibit sales by foreign service firms of their product within the country, selling of the service product below cost by government-owned services companies, restrictions on foreign exchange remittances needed by local consumers to pay for the imported service, prohibition or restriction on purchasing the service directly from foreign supplier who is not licensed to transact the business within the country (forced establishment).

Restrictions affecting the operations of a service firm within a foreign country.

Interference with a firm's access to a foreign market: Examples are measures that restrict a firm from establishing local operations, mandate partial local ownership in establishing local operations, or create procedural impediments to the formal process of establishing (incorporating) a subsidiary.

Restrictions on management control by foreign-owned service firms: Examples include discriminatory taxes placed exclusively or inequitably on foreign business income, profits or royalties, restrictions on repatriation of original investment, restrictions on access to foreign exchange needed to repatriate profits, controls on reinvestment of earnings, and forced local equity participation in already established operations.

Interference with a service firm's ability to market a service in a foreign country: Examples are restrictions on the scope of a foreign firm's activities in marketing the service, discriminatory licensing regulations and fees, discriminatory use of technical regulations, iadequate protection of intellectual property, regulatory procedures that discriminate against foreign firms, and discriminatory government procurement policies, government subsidies, restrictions on contractual freedom and contract enforcement.

Interference with maintaining support facilities on a competitive basis with local firms: Examples cover restrictions on access to inputs necessary for the production process such as advertising layouts, visas for necessary specialized personnel, high tariffs or undue delays on imported machinery and equipment, as well as government subsidies that favor locally-owned firms, and restrictions on equal access to support facilities necessary for the performance of a service by a foreign service firm.

The Committee does not believe that discrimination against foreign service firms is the only motivation for establishing barriers to service trade. On the contrary, there are at least two reasons which most nations agree justify certain types of barriers: protection of currency and balance of payments and protection of health and safety interests through professional and technical standards.

All nations have an obligation to maintain a stable currency value and a favorable balance of payments. Trade flows have a great deal to do with currency stability. As a result, restrictions on amounts of capital that can be converted at any particular time, limitations on the repatriation of profits and the income of foreign nationals are tools which nations sometimes use in order to avoid wild fluctuations in currency value. On the other hand, lengthy procedural delays in the handling of currency transactions often times reflect more of an obstructionist purpose than a concern over currency stability.

All governments also have the responsibility to protect the health and safety of its citizens. In order to fulfill this responsibility, it is necessary to regulate many service industries, such as construction and engineering, airline operations and transportation generally.

Each country may choose a different way of regulating these industries. Differences in regulatory procedures and methods, therefore, need not necessarily represent discrimination against foreign firms. When such standards are applied fairly to both domestic as well as foreign firms, such standards are clearly nondiscriminatory. On the other hand, some countries have developed such standards for the sole purpose of restricting foreign business operations.

It is important, therefore, to distinguish between those barriers which traditionally have been considered legitimate means of protecting the national and public interest, and those barriers which serve a protectionist purpose only, or discriminate among foreign service firms. For example, the Commerce Department has found that the 43 treaties of "friendship, commerce and navigation" now in force between the U.S. and other nations all permit the treaty partners to distinguish between domestic and foreign businesses engaged in most of the activities which are considered services.

Some of these treaties were negotiated long before services had achieved their current level of economic importance, although all of the ones with our most important trading partners were negotiated since W.W. II. These treaties provide two different types of treatment with respect to the establishment and operations of foreign businesses: most-favored-nation treatment in which a country may discriminate against foreign businesses and investment generally but not against businesses of one country and not another; and national treatment in which a country must treat foreign businesses and investment in the same way it treats its own domestic businesses.

Our treaties with Japan, France, Israel and all of our major trading partners, except Italy, provide for national treatment of foreign businesses. Yet, each of these treaties provides for most-favored-nation treatment rather than national treatment for many of the business activities covered under services, such as: air transport; banking; insurance; shipping; and many others.

The following excerpt from Article VII of the 1953 Treaty of Friendship, Commerce and Navigation between the U.S. and Japan illustrates the kind of exemptions provided in many of these treaties:

> 1. National and companies of either Party shall be accorded national treatment with respect to engaging in all types of commercial, industrial, financial and other business activities within the territories of the other Party whether directly or by agency or through the medium of any form of lawful judicial entity.
>
> 2. Each party reserves the right to limit the extent to which aliens may within its territories establish, acquire interests in, or carry on public utilities enterprises or enterprises engaged in shipbuilding, air or water transport, banking involving depository or fiduciary functions, or the exploitation of land or natural resources.
>
> 3. National and companies of either party, as well as enterprises controlled by such nationals and companies, shall in any event be accorded most-favored-nation treatment with reference to the matters treated in the present Article.

Similar exclusions are present in treaties with the following countries:

Belgium—(1963, Article VI).
France—(1960, Article V).
Germany—(1956, Article VII).
Israel—(1954, Article VII).
Korea—(1957, Article VII).
Luxembourg—(1963, Article VI).
Netherlands—(1957, Article VII).
Nicaragua—(1956, Article VIII).
Thailand (1968, Article IV).
Togolese Republic—(1967, Article V).

The following are examples compiled by the Commerce Department of ways the U.S. restricts foreign participation in some of the major service industries:

In the United States, various laws exclude or limit foreign participation in the following service industries:

(1) Airline: Section 1108 of the Federal Aviation Act of 1958 declares exclusive national sovereignty of the U.S. over its airspace, ef-

fectively denying aliens the right to utilize the airspace except under limited circumstances. This regulation parallels the maritime cabotage principle that only U.S. citizens should be allowed to transport domestic traffic. In addition, there are other regulations which place restrictions on the registration of foreign-owned aircraft, and on the investment or operations by aliens in domestic air carriage. The International Air Transportation Competition Act of 1979 modified the Federal Aviation Act to provide certain exemptions for foreign air carriers to carry domestic traffic for a limited period of time upon a finding of the Civil Aeronautics Board and the Secretary of Transportation of the existence of an emergency situation.

(2) Banking: The U.S. has a unique "dual banking system" whereby the chartering and regulation of banks is performed both by the federal government and state governments. There are differences between states with respect to capital requirements, liquidity requirements, lending limits, reserve requirements, interest rate limitations and the powers of various types of organizational forms. This results in the differential treatment of foreign banks by individual states and difficulty in reaching an agreement on the terms of reciprocal treatment.

(3) Communications: The Federal Communications Act of 1934 contains certain prohibitions on the foreign operation, ownership or control of wireless communications facilities in the U.S. Section 303 of the Act limits the issuance of radio and television operator licenses by the Federal Communications Commission . . . "to such citizens or nationals of the United States . . . as the Commission finds qualified." This limitation is based on the idea of preventing alien activities against the U.S. in the event of a war.

(4) Insurance: The McCarran-Ferguson Act of 1970 authorizes states to regulate insurance. State regulations primarily seek to ensure that a company which has collected premiums for resident policyholders will have sufficient funds to meet its obligations. As a general rule, out-of-state and foreign insurers are required to satisfy more stringent admission standards. Because of the differential treatment imposed by state regulations, the same problem encountered in banking with respect to reaching an agreement on reciprocal treatment also exists in insurance.

(5) Shipping: Various legal restraints operate on foreign investment in the maritime industries. The initial basis for these restraints was the concept of cabotage which reserved to one's nationals the trade along one's own coast. National security concerns and the promotion of the American merchant marine industry now serve as the primary rationales for the continuation of cabotage and similar restraints. In domestic trade, the restraint in foreign investment in the maritime industries generally takes the form of outright prohibition. The Merchant Marine Act of 1920 bars the transportation of merchandise:

> . . . by water, or by land and water, on penalty of forfeiture thereof, between points in the United States . . . either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented in under the laws of the United States

and owned by persons who are citizens of the United States.

With respect to foreign trade, the primary restraint takes the form of a requirement of administrative approval for investment in, or transfer of U.S.-flag vessels and U.S. ship construction facilities. Foreign investment in U.S. foreign trade vessels is also restrained by the ineligibility of aliens for government subsidies and by the limitations imposed on the methods of financing ship construction.

SERVICES TRADE POLICY: LONG TERM/SHORT TERM

In April of 1981, the Administration's Trade Policy Committee (chaired by U.S. Trade Representative William Brock) approved the U.S. government Work Program on Trade in Services which has five elements:

to develop better statistics on trade in services;

to examine U.S. laws in order to eliminate barriers to service exports. These laws include elements of the Foreign Corrupt Practices Act and the tax rate on Americans working abroad;

to use normal bilateral relationships to eliminate services trade barriers that are identified by U.S. companies;

to review domestic legislative provisions relating to the achievement of reciprocity for U.S. industries;

to prepare for multilateral negotiations under the auspices of the General Agreements on Tariffs and Trade (GATT) or the Organization for Economic Cooperation and Development (OECD).

Although the first four items of the work program could help promote services trade in the short-term, the Administration, thus far, has given greater attention to multi-lateral negotiations which offer more long-term benefits.

In June of 1981 at the urging of the U.S., the OECD, whose 22 members include the major Western nations and Japan, issued a statement saying "efforts should be undertaken to examine ways and means for reducing or eliminating the identified problem . . .", in the service sector. Although the OECD is a consultative organization whose decisions are not binding on the organization's individual members, the OECD staff was directed to analyze trade barriers in four areas: banking; insurance; shipping; and engineering and construction.

In addition, USTR has prepared trade issue papers on insurance, engineering and construction and telecommunications, data processing and information services and a 210 page list of more than 800 barriers to trade in services. This information was developed in preparation for the meeting of the GATT ministers which was held last November in Geneva.

USTR went to the GATT ministerial meeting seeking agreement on a "work program" on services which would lay the groundwork for full scale negotiations on a services agreement later in this decade. What USTR came away with fell far short of that goal.

Instead of a work program, the GATT ministers agreed to the following:

interested countries should conduct national studies to identify the importance of trade in services to their own countries and any problems they may have with it;

countries can, if they so choose, exchange information on services at the GATT level; and

the GATT should again look at the services in 1984 to determine what, if any, further action should be taken.

Probably more harmful than USTR's inability to obtain GATT approval for a work program was the USTR's inability to get approval for the inclusion of "investment" issues in the scope of the national studies which are to be conducted. GATT does not cover investment trade issues, but investment issues are inextricably related to almost every facet of trade in services (eg. the majority of all trade in services occurs through foreign affiliates, and therefore, the right to invest in a country and to establish foreign affiliates has a great deal to do with a company's ability to conduct services trade).

USTR has responsibility for the preparation of the U.S. national study on services. Work has not yet really begun, but USTR will coordinate the effort so that contributions from all relevent agencies can be included.

The Committee requests that the USTR report to the Committee not later than November, 1983, concerning the status of the U.S. national study on services. Furthermore, the Committee notes that very few of our international trading parties have been supportive of U.S. efforts to deal with services problems on a multi-lateral basis. As a result, the Committee would encourage USTR to attempt to resolve services trade problems on a bilateral basis, and if possible, through the OECD.

It took almost 10 years to negotiate agreements under GATT governing non-tariff barriers to trade in goods. These agreements, called "codes", deal with most significant non-tariff barriers which were not addressed in the original GATT articles (1974). There are four codes which are especially relevant to services: the government procurement code; the subsidies code; the standards code; and the licensing code.

To get an idea of what might result from a GATT negotiation of barriers to trade in services, it might be useful to consider how these codes might relate to services:

Government Procurement Code: this code extends national treatment to certain government procurement contracts and includes services which are incidental to the provision of goods. A Commerce Department memorandum says that although this code might appear the most applicable to services "There are, however, difficult issues to be resolved in attempting to extend national treatment in government procurement to services." Chief among these problems is the fact that in many countries, governments themselves operate monopolies of important services such as transportation, telecommunications and insurance. The memo goes on to say that "Even when not government owned, services such as banking and insurance are so important to the national interest that it would be difficult for governments to open their procurement fully."

Subsidies Code: this code sets rules on the use of export subsidies and countervailing duties. This code may not be particularly applicable to such services as banking and insurance, especially in instances of state control; however, it may be useful in establishing guidelines for subsidizing shipping and other transportation services.

Standards Code: this code deals with: standards, testing and certification of goods. There is no reason that a standards code should not be negotiated for services as well. A standards code would, at least, establish guidelines for determining what are legitimate trade barriers in sensitive service industries such as banking and insurance.

Licensing Code: this code is designed to eliminate the use of import licensing procedures as barriers to trade in goods. It also could be applied to services. By establishing uniform licensing guidelines, a licensing code for services could help eliminate the problem banks, insurance companies, accountants and others have had gaining access to many foreign markets.

Two other elements of the Administration's Work Program, better data and review of the adequacy of existing laws relating to the achievement of reciprocity for U.S. service industries, would also provide short-term benefit to service industries. In its white paper issued last September on "Services and U.S. Trade Policy", the Center for Strategic and International Studies at Georgetown University concluded that statistical coverage of the services sector is incomplete and "The United States lacks a framework for the definition and pursuit of American interests in the worldwide marketplace . . . The policy challenge is clear:

U.S. interests in the service sector must be studied carefully and be related to other sectors and to the overall national interest;

An effective legislative and executive branch framework must be established for pursuing U.S. interest;

A strategy must be devised to further these interests in the international arena."

A study issued last September by the U.S. International Trade Commission revealed a similar concern. In the study, the Commission interviewed 479 international service companies in 14 categories of services. The following conclusions, which the Commission reached after discussions with construction and engineering firms, were also consistent with opinions expressed by other service industries that were interviewed:

All of the above-mentioned barriers apply to all foreign construction engineering firms working abroad. However, the U.S. industry cites many disincentives unique to American firms, arising from U.S. government policies . . . U.S. firms cite a lack of government support in identifying potential international projects. The industry contends that little information regarding host-country projects is provided to firms from the U.S. commercial consulates. In contrast, the Governments of Western Europe and Japan allegedly provide much more support to their construction and engineering firms operating abroad.

PRESIDENTIAL AUTHORITY

Section 4 of the reported bill would give the President authority over services trade similar to that which he already has under the Trade Act for goods. Under this section, the President would have the authority, in his discretion, to establish terms and conditions under which foreign service firms shall be eligible to engage in interstate commerce in the U.S. The legislation provides that the President may take such action on his own initiative or in response to a private party petition.

The Committee believes that trade responsibilities for services as well as goods must be firmly in the hands of the President. The Committee notes that the Administration has supported legislation which would amend the Trade Act to clarify that the President has authority to deny or limit the access of foreign service firms as well as foreign goods firms to the U.S. market.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, oversight findings and recommendations have been made by the Committee as set forth in this report.

COMMITTEE ON GOVERNMENT OPERATIONS

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the cost incurred in carrying out H.R. 2848 would be $5 million.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 9, 1983.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 2848, a bill to establish a service industries development program, and for other purposes, as ordered reported by the House Committee on Energy and Commerce, May 4, 1983.

H.R. 2848 would establish a service industries development program in the Department of Commerce (DOC). The DOC would be required to conduct studies and develop policies designed to increase the competitiveness of United States service industries. The DOC would also have authority to collect and analyze industry data and develop a data base. Failure by businesses to comply with certain requests for confidential information would be resolved by the federal courts. The President would be given authority to impose conditions under which foreign service firms would be eligible to engage in interstate commerce.

H.R. 2848 authorizes $5 million to carry out the activities required by the bill. Based on information from the DOC, it is likely that approximately $1 million would be disbursed in each of the fiscal years 1984 through 1988 for additional data collection, processing and analysis related to service industries, assuming appropriation of the necessary funds. Initially, the emphasis would be on conceptualizing and developing a data base system, since little information about this area currently exists. Over time, the emphasis would shift towards maintaining the data base. If it is determined that major studies would be necessary to implement the provisions in H.R. 2848, the DOC might require and disburse funds more rapidly.

Enactment of this bill would not affect the budgets of state and local governments.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee makes the following statement with regard to the inflationary impact of the reported bill: The Committee believes that the bill will have an anti-inflationary impact. By promoting U.S. service exports, the bill will improve productivity and lead to long-term stable growth of U.S. service industries.

SECTION-BY-SECTION ANALYSIS

Section 1. This section provides that this Act may be cited as the "Service Industries Commerce Development Act of 1983."

Section 2. This section contains definitions of certain terms used in this Act.

Section 3. This section directs the Secretary of Commerce to establish a service industries development program within the Department of Commerce. The Secretary would be required under this program to collect information necessary for the development of U.S. policies on services to improve competitiveness, to collect information regarding the activities of both U.S. and foreign service firms, to conduct research and analysis of issues and problems facing service industries, and to provide state and local governments information on service industries. Under this section, the Secretary would also be responsible for reporting activities of foreign service firms in the U.S. market and U.S. service firms abroad, and the effect of Federal, State and local regulation on U.S. trade relationships and negotiations. In addition, the Secretary would be required to identify in his report the impact on trade in services of laws and policies of our trading partners.

The Secretary is directed to obtain the information he needs through voluntary means if possible. If this fails, he may then issue a subpoena to obtain information on service industry imports and exports. The Committee intends that the Secretary use this authority only if he considers the information he seeks to be critical for the purposes of carrying out his responsibilities under the Act. Such subpoena would be enforced by the appropriate U.S. court. In addition, this section provides that a party which willfully violates a request for information by the Secretary may be fined up to $10,000.

At the same time, this section contains protections for businesses which must report information. This section provides that all information submitted to the Secretary shall be held confidentially, and only released under court order. Under this provision, the Secretary may release information only in aggregate or summary form so that the identity and business operations of the party submitting the information are not revealed.

Section 4. This section grants the President discretionary authority to impose limitations or conditions under which foreign service firms may be eligible to engage in interstate commerce in the U.S. As in other laws which give the President this same authority over foreign goods producers, this section provides that the President may take action pursuant to his own initiative or upon petition by a private party. Provision is also made for holding a hearing to obtain public comment.

Section 5. This section authorizes $5 million for carrying out the purposes of this Act.

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